IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WA.No. 1823 of 2005()

AGAINST THE JUDGEMENT IN WPC.15589/2005 Dated 28/06/2005
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APPELLANT: PETITIONER

THE PANAVALLY VILLAGE SERVICE
CO-OPERATIVE BANK, REPRESENTED BY ITS
SECRETARY S.VIJAYAN NAIR, PANAVALLY, ALAPPUZHA.

BY ADV. SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENTS: RESPONDENTS
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1. THE KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VAIDHUTHI BHAVAN, PATTOM, TRIVANDRUM.

2. THE ASSISTANT ENGINEER,
POODIAKKAL ELECTRICAL SECTION, POOCHAKKAL.

3. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL MAJOR SECTION, ALAPPUZHA.

BY ADV. SRI.K.S.ANIL, SC, KSEB

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

W.A.No.1823 of 2005

Dated, this the 30th day of May, 2007

JUDGMENT

Sankaran, J.

The petitioner in the writ petition is the appellant in this writ appeal. The petitioner challenged Ext.P1 bill demanding the arrears of fixed electricity charges. It is not disputed that the petitioner was granted a connected load of 1 KW originally. From August, 1996 onwards the petitioner availed the facility of three phase connection and the connected load was increased to 6 KW. Without noticing the increase in the connected load the Board continued to collect fixed charges for 1 KW as against 6 KW. Ext.P1 bill was issued in these circumstances.

2. The contention in the writ petition is that Ext.P1 is violative of clause 42(d) of the Conditions of Supply of Electrical Energy. The Board contended that there is no question of applying clause 42 as there was no misuse of electrical energy by the writ petitioner. The learned Single Judge directed the Board to limit the recovery of actual fixed charges payable at the same rate at which it would have been payable.

3. The learned counsel for the appellant raised a contention that Section 56 of the Electricity Act, 2003 applies, and if so, arrears could be recovered only for a period of two years. He also submits that the assessment should have been under Section 126 of the Electricity Act, 2003 and the Board has not complied with Section 126 of the Electricity Act, 2003. No such contention was raised in the writ petition. No such contention is raised in the writ appeal as well.

4. A Division Bench of this Court in W.A.No.2076 of 2004 had occasion to deal with a case of somewhat similar in nature. The Division Bench held as follows:

> "Board shall have power of rectifying the mistake and bills issued after rectifying the mistake have to be honoured. Law of limitation will not apply since the default is a continuing one and the amount due to the Board was not claimed in time due to the negligence of the Board. Consumer is liable to pay the said amount on rectification of the mistake.

5. The contention of the learned counsel for the appellant that charges could be levied only for a period of two years also does not hold good in view of the decision in **Abdul Nazer** v. **K.S.E.B**. (2006 (1) KLT 811). In Abdul Nazer's case, the Division Bench held that arrears due from the consumer prior to the coming into force of the Electricity Act, 2003 can be recovered by revenue recovery proceedings as Section 56 (2) operates only prospectively. It was further held that Section 56(2) would be applicable only to the amounts payable after the commencement of the Electricity Act, 2003.

The contentions raised by the learned counsel for the appellant are without merit. Writ appeal is devoid of merits and it is dismissed.

(**H.L.Dattu)**
Chief Justice

(K.T.Sankaran)
Judge

vns